

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSHUA SANTOS,

Plaintiff,

v.

JOSEPH M. MURPHY, et al.,

Defendants.

CIVIL ACTION
NO. 17-12184-JCB

ORDER

December 4, 2017

BOAL, U.S.M.J.

On November 6, 2017, Joshua Santos, who is incarcerated at the Souza-Baranowski Correctional Center, filed a pro se civil rights complaint in which he claims that prison officials and employees at the Old Colony Correctional Center violated his rights under the Eighth Amendment when they allegedly used excessive force against him.

Now pending before the Court are the plaintiff's motions for appointment of counsel and for leave to proceed in forma pauperis. Upon review of these documents and the complaint, the Court orders the following:

1. Because the complaint does not include Santos's signature, he shall, within twenty-one days of the date of this order, provide the Court with a signed signature page of the complaint. The Clerk shall provide the plaintiff with a courtesy copy of his complaint for this purpose. The plaintiff only needs to return the signed signature page; he is not required to resubmit the entire complaint.

2. The motion for leave to proceed in forma pauperis (#2) is granted. Pursuant to 28 U.S.C. § 1915(b)(1), the Court assesses an initial partial filing fee of \$47.16. The remainder of the \$350 fee, \$302.84, shall be collected in accordance with 28 U.S.C. § 1915(b)(2). The Clerk shall provide a copy of this Order to the treasurer of the institution having custody of the plaintiff.

3. The Clerk shall provide the plaintiff with the form for Consent/Refusal of Magistrate Judge Jurisdiction and the instructions for that form (“consent package”). The parties shall indicate their consent or refusal to the jurisdiction of the Magistrate Judge by completing and separately filing the form entitled “Notice to Parties in Pro Se Prisoner Litigation Cases.” The form must be filed on paper within thirty days after the date of service on the last party.

4. The Clerk shall issue summonses as to defendants Murphy, Trout, Bautista, Gunn, Boebek, and Marriot. The plaintiff shall serve the summonses, complaint, consent package, and this Order upon these defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure. The plaintiff shall ensure that the copies of the complaint he serves on these defendants include his signature.

5. Because the plaintiff is proceeding in forma pauperis, he may elect to have the United States Marshals Service (“USMS”) complete service with all costs of service to be advanced by the United States. If so asked by the plaintiff, the USMS shall serve copies of the summonses, complaint, the consent package, and this Order upon the defendants as directed by plaintiff. The plaintiff is responsible for providing the USMS with all copies for service and for completing a USM-285 form for each party to be served. The Clerk shall provide the plaintiff with forms and instructions for service by the USMS.

6. The plaintiff shall have 90 days from the date of the issuance of the summonses to complete service.

7. At this time, summonses will not issue as to the “4 John Doe Correctional Officers” because “John Doe” is a fictitious name. Although the use of fictitious names to identify defendants is not favored, situations may arise where the identity of an alleged defendant cannot be known prior to the filing of a complaint. See Martínez-Rivera v. Ramos, 498 F.3d 3, 8 (1st Cir. 2007). If, through discovery, the plaintiff discovers the true names of the “John Doe” defendants, he “should act promptly to amend the complaint to substitute the correct parties and to dismiss any baseless claims.” Id. at 8 n.5. He may then also file a motion for issuance of summonses for these defendants. If summonses issue, the United States Marshal shall complete service as directed by plaintiff with all costs of service to be advanced by the United States.

8. The motion for appointment of counsel is DENIED WITHOUT PREJUDICE to renewal once the defendants have responded to the complaint.

SO ORDERED.

/s/ Jennifer C. Boal
Jennifer C. Boal
United States Magistrate Judge